

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



*United States Court of Appeals  
for the District of Columbia*

**FILED SEP 27 1946**

*Joseph W. Stewart*  
**CLERK**

**No. 9326**

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**United States Court of Appeals**

**DISTRICT OF COLUMBIA**

*April* ~~JUNE~~ **TERM, 1946**

**486**

**IN RE GEORGE T. JORDAN, APPELLANT**

**BRIEF FOR APPELLEE**

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*Assistant United States Attorney,  
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(I)



# United States Court of Appeals

DISTRICT OF COLUMBIA

April ~~1946~~ TERM, 1946

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No. 9326

IN RE GEORGE T. JORDAN, APPELLANT

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## BRIEF FOR APPELLEE

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### ISSUES INVOLVED

#### I

Whether the court or justice to whom a petition or a writ of habeas corpus is presented on the ground that the petitioner, having been committed for insanity, is presently of sound mind, has any discretion to deny the writ, or leave to file the petition, on the ground of inherent improbability of recovery since the last judicial determination of that issue.

#### II

Whether the court abused its discretion in denying leave to file the petition in the instant case.

### SUMMARY OF ARGUMENT

#### I

The right to be heard on the issue of continuing insanity is not without limit. In considering a petition for habeas corpus presenting such an issue, the justice or court may take notice of its own records and if they show prior adverse determinations on that issue may consider that fact in determining

whether to issue the writ demanded. Insofar as *Rosier v. Overholser*, 76 U. S. App. D. C. 214, 133 F. (2d) 316 decided that the issuance of a writ is determinable by the allegations of the petition alone, it has been overruled by the case of *Dorsey v. Gill* (U. S. App. D. C.), 148 F. (2d) 857.

## II

The court did not err in exercising its discretion to deny leave to file the petition in the instant case. There is no difference between denying leave to file and denying the writ and dismissing the petition after allowing it to be filed. Either alternative would be permissible in this case. The controlling point is that the court did not err in denying a hearing on the merits of the issue of recovery. By its own records, upon which it was entitled to rely and act, the court was advised that the same contentions presented in the petition had been decided adversely to petitioner less than six weeks previously, that the time to appeal from that determination had not even expired, and no facts were stated in the petition making doubtful the inherent improbability of a change warranting the relief sought.

## ARGUMENT

### I

The first question is whether the court or justice has *any* discretion to deny a hearing on the issue of sanity on the ground of inherent improbability of recovery or change since the last judicial determination of that fact. This issue would demand of an answer if the petition were filed five minutes after confirmation by the court of a verdict of lunacy in the regular commitment procedure. While concededly the full blown doctrine of res judicata does not apply in habeas corpus, yet in determining static facts, such as guilt and the jurisdictional facts of a prior trial, a court or judge may give controlling weight to prior habeas corpus hearings and deny a hearing where the petition merely renews contentions previously decided. *Pope v. Huff*, 79 U. S. App. D. C. 18, 141 F. (2d) 727; *Rookard v. Huff*, 79 U. S. App. D. C. 291, 145 F. (2d) 708. While the effect

of such a prior determination on the issue of lunacy diminishes with the lapse of time and ultimately has perhaps no weight, yet for some undetermined length of time it must be persuasive in varying degrees and a sufficient basis to deny further hearing.

In passing on a petition for habeas corpus alleging sanity the court may notice of its own motion, its own records of prior determinations of the same issue. *Walker v. Johnston*, 312 U. S. 275, 284; *Rookard v. Huff*, *supra*; *Dorsey v. Gill*, *supra*.

It has ever been the law that the grant of the writ of habeas corpus lies in the exercise of sound discretion by the court. *Goto v. Lane*, 265 U. S. 393, 401; *Salinger v. Loisel*, 265 U. S. 224, 231.

The case of *In re Rosier*, *supra*, recognized that the writ of habeas corpus does not issue as of right, but only upon a showing of probable cause, but held that said showing or lack thereof is to be determined solely from the face of the petition. However, the rule theretofore recognized, *Walker v. Johnston*, *supra*, and since followed *Rookard v. Huff*, *supra*; *Pope v. Huff*, *supra*; *Dorsey v. Gill* (U. S. App. D. C.) 148 F. (2d) 857; is that the court may pass on the sufficiency of the petition in the light of facts judicially known to it, including its own incontrovertible records. The *Rosier* case recognized that the alternative procedure of issuing a rule to show cause might be followed, but it has since been determined that the court may notice judicially those same facts of prior determinations which could be presented to it by return to the rule to show cause, *Dorsey v. Gill*, *supra*.

In *Dorsey v. Gill*, this Court announced that the procedure which it outlined should henceforth be followed in habeas corpus and expressly stated that insofar as this procedure conflicted with the majority opinion in the *Rosier* case, the latter should be considered overruled. The procedure outlined in the *Dorsey* case, so far as applicable to the instant case, is as follows:

So far as concerns the numerous petitions for habeas corpus filed by inmates of St. Elizabeths Hospital, we have outlined, in recent cases, the procedure which

should be followed—to the extent that it differs from or supplements procedure generally applicable in habeas corpus cases. Briefly summarized, it is as follows: (1) Habeas corpus is available, not for the purpose of determining a petitioner's mental condition, but, instead, as a method of *initiating* an appropriate procedure for that purpose; \* \* \* (5) if a petitioner was originally committed in a proceeding, properly commenced and carried out, but the judge, to whom the petition for habeas corpus is presented, is satisfied that a sufficient showing of present sanity has been made, he should, in this case, also, order that the proceedings be reopened and a reexamination made to determine the petitioner's present mental condition. \* \* \* *How frequently such reexaminations should be required must depend, in each case, upon the petition presented, the type of insanity for which the petitioner was originally committed, the time elapsed since the last inquiry and other considerations upon the record, of which the judge is required to take judicial notice.* [Italics supplied] (148 F. (2d) 864-865).

\* \* \* \* \*

From whatever source the petition may come, it is the duty of the judge to whom it is presented, carefully, to consider it. For this purpose, the petition should not be scrutinized with technical nicety; nor the duty discharged as a mere matter of routine. Nevertheless, it is as much the duty of the judge to deny leave to file an insufficient petition, or to deny a writ upon an insufficient petition, already filed, as it is his duty to grant a writ upon a sufficient petition. Having considered the petition, the judge should adopt whichever alternative procedure, available under the applicable statutes, is most appropriate to the case.

There are at least ten such possible alternatives, as follows: (1) When a petition is presented to a judge with a request for leave to file it, the judge may, if the petitioner is not entitled to the writ, deny leave to file it; (148 F. (2d) 865) \* \* \*



In determining which of the several alternatives to adopt, the judge must, of course, exercise discretion appropriate to the circumstances of the case. This has been held many times by the Supreme Court, and by other federal courts. Only when alternatives (4) or (5) are appropriate can it be said with any degree of propriety that the judge's action is other than discretionary in character, and, presumably he must have done something approximating the exercise of discretion, to arrive at the conclusion that either (4) or (5) should be adopted. (148 F. (2d) 866-867)

\* \* \* \* \*

If a prior application for a writ of habeas corpus has been made, in the same case, by the petitioner, or in his behalf, whether in this or some other jurisdiction, the petition should so state and such other facts and documents should be set out as will allow the judge properly to determine whether the issues presented by the present petition were decided in a former proceeding; thus enabling him to exercise his discretion accordingly. Though the doctrine of *res judicata* does not apply to habeas corpus cases, the fact that the same issues have been decided in a former proceeding may, and sometimes should, as a matter of judicial discretion (148 F. (2d) 869), be given controlling weight. If, for example, the judge, to whom is presented a petition, together with a request for leave to file, ascertains that petitioner has on a previous petition had a full hearing upon the same identical allegations, it would follow that leave to file the second petition should be denied.

It is apparent, therefore, that the words of the statute—from *the petition itself*—include information, available to the judge by judicial notice, to which the allegations of the petition refer, or upon which they depend; it is the duty of the judge to look through the petition, to the record, in order that he may discover such information; having done so, the exercise of sound judicial discretion may require that the petition be dismissed or leave to file it denied. (148 F. (2d) 870.)

It must follow, therefore, that in some degree there exists discretion to deny immediate renewal of hearings on the issue of sanity.

## II

The trial justice who denied leave to file the petition in this case did not thereby err. On the facts, his action is distinguishable from that taken in the *Rosier* case, because he acted on no information other than that open and incontrovertible on the records of the court. In addition, the lapse of time between the prior determination and the renewed petition was just short of six weeks, not almost five months. The appellant's last previous determination had been entered only after he was represented by able counsel. It is not claimed that any error occurred in the conduct of that hearing, and in fact the time for appeal from that determination (three months, U. S. Court of Appeals Rule 10 (a)) had not expired when the current proceeding was initiated. No appeal was taken from that proceeding. It has always been considered a permissible exercise of discretion to deny a writ of habeas corpus where a more direct review is yet open to the petitioner. *Salinger v. Loisel*, 265 U. S. 224, 231, pointed out that the unabated existence of a right of appeal would be a sufficient reason to deny a writ of habeas corpus. "\* \* \* it does not follow that a refusal to discharge on one application is without hearing or weight when a later application is being considered. In early times when a refusal to discharge was not open to appellate review, courts and judges were accustomed to exercise an independent judgment on each successive application, regardless of the number. But when a right to an appellate review was given the reason for that practice ceased and the practice came to be materially changed—just as when a right to a comprehensive review in criminal cases was given the scope of inquiry deemed admissible on *habeas corpus* came to be relatively narrowed.

"The federal statute (§ 761, Rev. Stats.) does not lay down any specific rule on the subject, but directs the court 'to dispose of the party as law and justice may require'. A study of the cases will show that this has been construed as meaning that each application is to be disposed of in the exercise of a sound



judicial discretion guided and controlled by a consideration of whatever has a rational bearing on the propriety of the discharge sought. Among the matters which may be considered, and even given controlling weight, are (a) *the existence of another remedy*, such as a right in ordinary course to an appellate review in the criminal case, and (b) *a prior refusal to discharge on a like application.*" (Emphasis supplied.) Such mode of review was open to appellant at the time he presented the current petition to the court. The period within which a determination might be appealed might be taken as the irreducible minimum within which a new petition may not be filed except upon an extraordinary showing, something more than the customary allegation that "your petitioner is now of sound mind."

A further consideration in determining the weight to be given the last preceding determination is that in that proceeding appellant was required only to make a showing sufficient to create a "substantial doubt" in the mind of the court that insanity continued. *Overholser v. DeMarcos* (U. S. App. D. C.) 149 F. (2d) 23. Assuming that such a showing is something less than the traditional preponderance of the evidence required to maintain the burden of proof in civil cases, and formerly at least in habeas corpus, the adverse determination of the last habeas corpus proceeding implied that appellant had failed to sustain that lesser burden of proof, making it even less likely that a recovery had occurred.

Appellant's brief states that he should have had an opportunity to have the matter referred to the Commission on Mental Health. While he is entitled to such a reference and the assistance of the Commission's experts, there is no occasion for a ruling that such a reference should be made until there has been a demand therefor, or a showing that the case is so exceptional as to call for a reference without regard to the wishes of the petitioner.

#### CONCLUSION

In the light of the procedure laid down in *Dorsey v. Gill*, the trial court had authority to exercise discretion in denying a hearing on the issue of sanity at the time the petition was

presented. No error appears in the denial of leave to file and the judgment should be affirmed.

Respectfully submitted,

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JOHN P. BURKE,  
*Assistant United States Attorney,*  
*Attorneys for Appellee.*



BRIEF AND APPENDIX FOR APPELLANT

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

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April Term, 1946  
No. 9326  
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Noted September 11, 1946  
for the District Court

FILED AUG 26 1946

*Grayson W. Welch*  
Clerk

In Re:

GEORGE T. JORDAN,

Appellant.

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Appeal from the District Court of the United States  
for the District of Columbia  
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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

April Term, 1946  
No. 9326

In Re:

GEORGE T. JORDAN,

Appellant.

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BRIEF FOR APPELLANT.

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Jurisdictional Statement

Jurisdiction to hear this case was conferred upon the United States District Court for the District of Columbia by Section 315, Title 11, District of Columbia Code, 1940. Jurisdiction is conferred upon this Court by Section 101, Title 17, District of Columbia Code, 1940.

Statement of the Case

This is an appeal by petitioner, George T. Jordan, from an order of the District Court of the United States for the District of Columbia denying petitioner leave to file a petition for Writ of Habeas Corpus.

Petitioner is confined in St. Elizabeth's Hospital under the authority of an order of the District Court of October 11, 1945, adjudging him to be of unsound mind. In December, 1944, petitioner, having been found guilty of robbery, was sentenced to four to twelve years' imprisonment by the District Court. In addition, the following indictments, none of which have been tried, have been returned against the petitioner:

#73850, returned June 12, 1944, charge, first degree murder.

#73852, returned June 12, 1944, charge, Assault with Intent to Rob.

#73853, returned June 12, 1944, charge, Grand Larceny.



#73854, returned June 12, 1944, charge, Unlawful  
Use of Automobile.

We also believe it necessary to inform the Court that on January 22, 1946, the petitioner applied to the District Court for a Writ of Habeas Corpus, alleging, as he does in the application in this case, the illegality of his detention because of his having regained his sanity. Mr. Charles E. Ford, a member of the bar of this Court, was appointed by the District Court to represent the petitioner, and did so represent him. On April 5, 1946, the writ was discharged, after hearing, and the petitioner was remanded to the custody of the Superintendent of St. Elizabeth's Hospital. In this proceeding, the Court (Bailey, Justice) found as a matter of fact that the petitioner was of unsound mind and concluded as a matter of law that his detention was legal.

On or about May 15, 1946, the petitioner mailed to the District Court a "Petition for Writ of Habeas Corpus" in which he set forth that he "is of sound mind and is illegally restrained of his liberty by the Superintendent of St. Elizabeth's Hospital," and prayed that a Writ of Habeas Corpus issue. (App. p. 1). To this petition is attached a jurat and a long affidavit setting forth the history of his case, as the petitioner believes the facts to be. We believe that these allegations are immaterial in the determination of this appeal, and insofar as they infer that the prior representation of this petitioner by Mr. Ford was inadequate, are inherently improbable. Nevertheless, insofar as the view we take of this case is concerned, they are surplusage, and should be disregarded.

A handwritten notation in the record (App. p. 2) is the only indication of the Court's action. This notation is as follows:

"Denied. Hearing on similar order April 5, 1946.

Bailey  
J"



### Statutes Involved

The following provisions of the statutes are involved in the determination of the case:

Revised Statutes, Section 754, U.S.C., Title 28, Section 454:

Application for writ of habeas corpus shall be made to the court, or justice, or judge authorized to issue the same, by complaint in writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known. The facts set forth in the complaint shall be verified by the oath of the person making the application.

Revised Statutes, Section 755, U.S.C., Title 28, Section 455:

The court, or justice, or judge to whom such application is made shall forthwith award a writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto. The writ shall be directed to the person in whose custody the party is detained.

### Statement of Issue

It was error for the District Court to refuse, because of its earlier decision, to issue a Writ of Habeas Corpus where the petition was legally sufficient on its fact.

### Summary of Argument

The petition, although inartistically framed, was legally sufficient on its face to invoke the jurisdiction of the District Court, and, under the terms of the statute, it was the duty of the Court to issue the Writ. On the making of a return to the effect that the petitioner is of unsound mind, if such should be the return of the Superintendent, the factual issue thus raised could be determined only after hearing, and the petitioner should be afforded an opportunity to request the Court to refer the matter to the Commission on Mental Health for its report.



## ARGUMENT

The Writ of Habeas Corpus was properly applied for, and should have been issued. The petitioner is entitled to his release if his allegation that he is now of sound mind is true, as it must be taken to be at this state of the proceedings. This Court has said:

The writ of habeas corpus is a writ the function of which is to accomplish the release of one whose confinement is either without legal foundation or without continued factual foundation. If an original confinement was invalid the writ is a means of relief against that. If an original confinement was valid but the person confined has regained his sanity, the writ is used to seek discharge from confinement on that factual ground.

--Barry v. Hall, 68 App. D.C. 350, 357, 98 F. (2d) 222.

The petition in this case, although it did nothing but state the bare essentials as ultimate facts, was legally sufficient, on its face, as a petition for a Writ of Habeas Corpus. Analyzing its allegations, it will be seen that the petitioner stated the place in which he is held, an adequate description of the person restraining him, and the illegality of the detention, i.e., that petitioner is of sound mind. In re Rosier, 76 U.S. App. D.C. 214, 223, 133 F.(2d) 316. These allegations are in substantial compliance with the terms of the statute authorizing district courts to issue Writs of Habeas Corpus. Revised Statutes, Sections, 754, 755, 28 U.S. C.A., Sections 454, 455.

The memorandum of the District Court Justice states that leave to file the petition for the Writ was denied because a similar Writ was denied after a full hearing a little more than a month prior to this application. The record does not indicate whether it was the determination of the trial judge that the former decision was res judicata or whether it was his belief that the petitioner, in view of that decision, could not establish the allegations of the petition. In either event, the ruling was clearly erroneous.



It is settled law that the doctrine of res judicata has no application to habeas corpus proceedings, Salinger v. Loisel, 265 U.S. 224, 230, 68 L.Ed. 989, 990, 44 S.Ct. 519; Wong Doo v. United States, 265 U.S. 239, 240, 68 L.Ed. 999, 1000, 44 S.Ct. 524; Barry v. Hall, 68 App.D.C. 350, 356, 98 F.(2d) 222.

Nor does the previous determination warrant the trial court, in the exercise of its discretion, in refusing the writ. Such exercise of discretion would necessarily involve a determination of the factual issue of petitioner's sanity, and if the Court determined this question of fact without hearing evidence, it committed error. This Court has said:

When a petition for a writ of habeas corpus is presented to a court or judge, unless it appears from the petition itself that the petitioner is not entitled thereto, either the writ must forthwith issue. . . or a rule to show cause why the writ should not be granted must forthwith issue, and this even if the allegations of the petition are upon their face "improbable and unbelievable." The petition must be examined as if on demurrer, the truth of the allegations being assumed. A petitioner cannot be denied the opportunity to prove the truth of the allegations he makes if those allegations, if true, entitle him as a matter of law to release from restraint. . . . No controverted issue of fact arising under a petition for a writ of habeas corpus return and traverse can be determined except after a hearing ore tenus or upon depositions.

--In re Rosier, 76 U.S. App.D.C. 214, 219, 133 F. (2d) 316, citing Walker v. Johnson, 312 U.S. 275, 85 L.Ed. 830, 61 S.Ct. 574.

In his petition, the petitioner stated that he is of sound mind. If this allegation is true, as it must be taken to be, the petitioner is entitled to his release, and by the terms of the statute, it was the duty of the Court to issue the Writ. In the event of a return alleging the insanity of petitioner, the Court should have given the petitioner an opportunity to request an examination of his condition by the Commission on Mental Health. DeMarcos v. Overholser, 78 U.S. App.D.C. 131, 137 F.(2d) 698. The summary ruling of the Court denying the petitioner leave to file the application departed from the procedure established by this Court, and was error.



Conclusion

In view of the departure from the established authorities in this jurisdiction, we respectfully submit that the judgment herein must be reversed, and the Court below directed to issue the Writ of Habeas Corpus, and in the event of a return alleging the petitioner's insanity, to secure an examination of his mental condition by the Commission on Mental Health.

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Attorney for Appellant.



APPENDIX

R.p.1

In The District Court of the United  
States For The District of Columbia

United States

vs.

George T. Jordan

Petition For Writ of Habeas Corpus

The petition of George T. Jordan respectfully shows that he is of sound mind and is illegally restrained of his liberty by Superintendent of Saint Elizabeth Hospital. Your petitioner, therefore, prays that the writ of habeas corpus issue, commanding said Superintendent to produce before this Honorable court, the body of your petitioner to abide such direction as may be given in the premises.

R.p.2

Petitioner says that he is without funds, and prays the Court to proceed with this action without prepayment of costs. He further says that the Statements herein contained are true and correct to the best of his best knowledge and belief.

(Sgd) George T. Jordan  
PETITIONER

Subscribed and sworn to before me a notary in and for the District of Columbia in the City of Washington, the said petitioner who I personal believed to be of sound mind and is capable of manage his own affairs, on this the 13th day of May A.D. 1946

(Sgd) Roscoe I. Aull  
NOTARY PUBLIC, D.C.

R.p.11

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLUMBIA

In Re: Petition of  
GEORGE T. JORDAN

St. Elizabeth's

1941 Feb. 11 Indicted in this court for Vio. Sec. 826B  
and Grand Larceny, Crim. Case No. 67,216

He further says that the Statements herein contained are true

and correct to the best of his best knowledge and belief.

14 Arraigned plea not guilty.

14 Wayne Browning appointed to defend.

24 Trial by jury waived. Trial by court and

(Sgd) George T. Jordan  
PETITIONER

-1-

Subscribed and sworn to before me a notary in and for



judgment guilty.  
Mar. 7. Sentenced to penitentiary for period of 1 to 3 years. .... Letts, J.

1943 Oct. 26 Petition in letter form stating that he had been sent to Gallinger Hospital two or three times and was there at that time. No aff. of poverty.

1946 Jan. 18 Petition for writ of habeas corpus and statement of poverty; verified.

22 Ordered filed (HC 2972) writ be issued.... Holtzoff, J.

Apr. 5 Findings of fact and conclusions of law.... Bailey, J.

Order discharging writ and remanding petitioner.... Bailey, J.

\* \* \*

May 15 Submitted is petition for writ of habeas corpus, statement of poverty and papers in support.

Denied. Hearing on similar writ April 5, 1946

Bailey

J.